Supreme Court of the United States

OCTOBER TERM, 1947

No. 390

SEABOARD AIR LINE RAILROAD COMPANY,
Appellant,

vs.

JOHN M. DANIEL, as Attorney General of the State of South Carolina, and W. P. BLACKWELL, as Secretary of State of South Carolina,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

REPLY BRIEF FOR APPELLANT

W. R. C. COCKE,
J. B. S. LYLES,
Counsel for Appellant.

HAROLD J. GALLAGHER,
LEONARD D. ADKINS,
JAMES B. McDONOUGH, JR.,
Of Counsel.

January 7, 1948.

INDEX

TABLE OF CASES

STATUTES

OTHER AUTHORITIES

Supreme Court of the United States

OCTOBER TERM, 1947

SEABOARD AIR LINE RAILROAD COMPANY, *Appellant*, *vs.* JOHN M. DANIEL, as Attorney General of the State of South Carolina, and W. P. BLACKWELL, as Secretary of State of South Carolina, *Appellees*.	No. 390

APPEAL FROM THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

REPLY BRIEF FOR APPELLANT

Introduction

In this brief we have attempted to single out for reply the points made by the brief for Appellees which are really germane to the fundamental questions presented by this appeal. Essentially the main brief for Appellant meets every question of substance raised in the brief for the Appellees, but the untenable nature of various aspects of the argument for Appellees should be noticed. A considerable part of that argument strays from the real issues and is so clearly irrelevant as to require no argument in reply.

I

APPELLEES' INTERPRETATION OF THE PROVISIONS OF SECTION 5 OF THE INTERSTATE COMMERCE ACT.

Appellees contend that it was neither the intent nor the effect of Section 5 of the Interstate Commerce Act to relieve Appellant of the requirement of separate incorporation in South Carolina but the reasoning is clearly unsound. The argument ignores the controlling words of Section 5 (2) (a) (i), making it "lawful with the approval and authorization of the Commission— * * * for *any carrier*— * * * to purchase * * * the properties of another" if the Commission shall find under Section 5 (2) (b), as it did find, that the purchase "will be consistent with the public interest." The argument also ignores or misconstrues the provisions of paragraph (11) that the power conferred upon the acquiring carrier shall be "exclusive and plenary", that such carrier "shall have full power * * * to carry such transaction into effect and to own and operate any property and exercise any control or franchises acquired through said transaction without invoking any approval under State authority" and that "any carriers * * * participating in a transaction approved or authorized under the provisions of this section shall be * * * relieved from the operation of the anti-trust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved * * * and operate any properties * * * acquired through such transaction."

No attempt is made by Appellees to explain away these specific provisions. On the contrary the argument seizes

upon certain clauses in paragraph (11), isolates them from their context and ignores the basic purposes of that paragraph.

Appellees first quote the language dealing with the machinery of a corporate merger or consolidation which refers to a majority vote of the holders of the shares of the consolidating or merging corporations "unless a different vote is required under State law", and apparently reason that this language recognizes the power of South Carolina to require separate incorporation. It is, of course, clear that all that Congress did was to recognize that the voting rights, if any, of stockholders of already existing state corporations involved in a consolidation or merger should be preserved. The recognition of stockholders' voting rights has nothing to do with the recognition of any right in a state to compel incorporation of a corporation in that state as a condition to operating railroads within that state.

It is also argued that the words "insofar as may be necessary" included in the language from paragraph (11) which we have quoted above is such a qualification of the powers conferred by Section 5 as to exclude from those powers the power to operate without incorporation in a state whose statutes purport to require incorporation. That argument is apparently based on the theory that the only "transaction" authorized in this case was the ownership by the new Seaboard, in some manner, directly or indirectly, of the properties of the old Seaboard, and that since that result might have been accomplished by the organization of a South Carolina subsidiary or by a merger of the new Seaboard with a South Carolina corporation, operation in South Carolina without incorporation was not "necessary."

It is, of course, clear that the "transaction" referred to in paragraph (11) is the specific transaction approved by the Commission, that is, in this case, the ownership and operation by the Virginia corporation of the South Carolina properties. It cannot be questioned that it was "necessary" for the Virginia corporation to be "relieved" from the "prohibitions" of the South Carolina statutes in order to carry out that transaction.

It is then further argued by Appellees that the concluding language of paragraph (11) that "nothing in this Section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation" was intended as an express affirmance of the State power to require separate incorporation. The brief for Appellees reasons that:

> "It is plain that for the Act to have had the effect contended for by Appellant, it should have provided in expressed terms that railroad corporations should no longer be required to take out State charters or that the In. rstate Commerce Commission should have been granted express power to relieve such corporations from taking out State Charters."

We take the words "State charters" from the foregoing quotation to mean a South Carolina charter. For, obviously, since paragraph (11) negatives the creation of a Federal corporation but permits the carrier applying to the Commission to acquire the properties of another, corporate existence under the law of some State is presumed: Otherwise, there would be no carrier entity capable of acquisition.

The brief then proceeds with the following complete non sequitur:

> "It is submitted that if the findings and order of the Commission should be given the effect claimed by the Appellant herein, then the Virginia charter of said corporation, as so amended, would be in effect a Federal corporation."

Such reasoning is directly antithetical to the wording and plain intent of paragraph (11). In other words, the express negation in paragraph (11) of any creation of a Federal corporation is ignored as are the words of the paragraph, "any power granted by this Section to any carrier or corporation" to acquire, own and operate the properties of another upon a finding by the Commission that such acquisition, ownership and operation is in the public interest "shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State."

Clearly, the "addition to" the powers of Appellant as the acquiring carrier "under its corporate charter" could only mean its Virginia charter as a railroad carrier. And by the express language of paragraph (11), the additional corporate power is to "carry such transaction into effect and to own and operate any properties without invoking any approval under State authority" and to be "relieved from the operation of all restraints, limitations and prohibitions of law" of the State of South Carolina.

The decisions cited under Section (3) of Appellant's main brief (pp. 35-40) establish the constitutional right of Congress to add to the powers of a State corporation to the extent considered desirable for the accomplishment of National ends.

That this purpose was in the mind of Congress when it amended Section 5 by the Transportation Act of 1940

appears from the Report of the Senate Committee on Interstate Commerce on the proposed 1940 amendments to the Interstate Commerce Act. That report states (Senate Report, Vol. 6, Nos. 226-500, Misc. II, 76th Congress, First Session):

> "S.2009 Par. (10). Another change from existing law is to be found in paragraph (10) of Section 49 which grants carriers corporate powers under conditions set forth to carry into effect unification transactions approved by the Commission (see also paragraph (3)(a) of this Section)."

Paragraph (10) is identical with existing paragraph (11) of Section 5 except that (3)(a) above referred to is now in paragraph (11) as the proviso "nothing in this section shall be construed to create or provide for the creation directly or indirectly of a Federal Corporation etcetera."

The same Congressional understanding appears from the excerpts shown in the appendix to this brief from the hearings in 1939 before the Senate Committee on Interstate Commerce and the House Committee on Interstate and Foreign Commerce on various bills to amend the Interstate Commerce Act, held during the first session of the 76th Congress. Those excerpts contain statements on this precise point made by Judge R. V. Fletcher as spokesman for the Committee of Six, appointed by President Roosevelt to recommend extensive revisions of the Interstate Commerce Act.

II

THE CASE OF *TEXAS* v. *UNITED STATES* IS CONTROLLING.

The argument for Appellees in attempting to distinguish *Texas* v. *United States,* 292 U. S. 522, is demonstrably unsound, apart from the fact that that decision was ren-

dered in 1934, before Congress, by the amendments to Section 5 made by the Transportation Act of 1940, had expressly extended the powers conferred by that Section. In that case the State of Texas attacked the approval by the Interstate Commerce Commission of provisions of a lease from the Texarkana and Fort Smith Railway Company, a Texas corporation, of its properties in Texas and elsewhere to the Kansas City Southern Railway Company, a Missouri corporation, which permitted the lessee to abandon or remove from Texas the general offices, shops and other facilities of the lessor. The provision was attacked as being in violation of the statutes of Texas which confine to Texas corporations the right to "own or maintain any railways within the State", require every railroad company chartered by the State "to keep and maintain permanently its general offices within this State", and prohibit any railroad company from changing "the location of its general offices, machine shops or roundhouses, save with the consent and approval of the railroad commission" of Texas.

The Interstate Commerce Commission, relying on the provisions of the Emergency Transportation Act of 1933 (48 Stat. L. 211), found that consummation of the plan for the lease involving removal of the shops and offices from the State, unification of operations and elimination of duplications of work would result in an annual saving of $81,000.00 and "will be in harmony with and in furtherance of the plan for the consolidation of railroad properties heretofore established by us and will promote the public interest".

It is strikingly significant that, as stated in the opinion of this Court: (*Texas* v. *U. S.*, 292 U. S. 522 at page 528)

> "The State of Texas raises no question as to the constitutional power of the Congress to confer authority upon the Commission to approve the proposed lease with the stipulations under consideration. *The question is simply as to the scope of the authority which has been conferred,—the construction of the applicable statutory provisions.* These are found in § 5 of the Interstate Commerce Act as amended by the Emergency Railroad Transportation Act, 1933 (Title II, §§ 201, 202)." Emphasis supplied.

The significance of the italicized sentence is apparent from the following quotation from the opinion of the Supreme Court of South Carolina (R159)

> "The defense raised no question as to the constitutional power of the Congress to confer authority upon the Commission to approve the purchase and reorganization of the old Seaboard Air Line Railway Company. The question here has to do simply with the scope of the authority which has been conferred."

Discussing the power of the Commission exercised in the Texas case, this Court, referring to the purposes of the broadening provisions of Section 5 of the Act, as amended by the Emergency Transportation Act of 1933, said at page 531:

> "The criterion to be applied by the Commission in the exercise of its authority to approve such transactions * * * is that of the controlling public interest. And that term as used in the statute is not a mere general reference to public welfare, but, as shown by the context and purpose of the Act 'has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities'—*New York Central Securities Corp.* v. *United States,* supra."

> "It is in the light of this criterion that we must consider the scope of the Commission's authority in relation to the provisions which are intended to relieve interstate carriers of burdensome outlays."

The brief for Appellees attempts to avoid the conclusive reasoning of the opinion in the Texas case on the ground that no question was involved as to any obligation to take out a Texas charter and that a lease, not an acquisition, was involved. But no serious attempt is made or could be made to avoid the fundamental basis of the decision, which was the power of the Commission to find that it was in the public interest to permit a Missouri corporation to lease, operate and maintain properties in Texas (contrary to the Texas statutes) and to remove the general offices and shops of the lessor company from Texas, despite an affirmative prohibition against such removal. The vigor with which the State of Texas assailed the action of the Commission and its attack upon the operation of Section 5 and the reasons asserted for that attack show that the attempted distinction by Appellees is without substance, and it is not material that the attack was concentrated on the removal of the offices, rather than on the lease itself.

III

THE ATTACK UPON THE COMMISSION'S FINDINGS.

Under heading II (A) the brief for Appellees contends: (a) that the Interstate Commerce Commission did not really intend to find that it was necessary, as contemplated under the Interstate Commerce Act, in order to enable the Appellant Company to carry out its Order for the Appellant

Company to be relieved of the requirement of the South Carolina Constitution and Statute as to incorporating under the laws of the State, but (b) if it did so intend to find, its other findings contained in its Report and Order show that such alleged finding of necessity was arbitrary and unreasonable and hence void.

(a) There is nothing in Section 5 requiring the Commission to make any finding as a prerequisite to its Order that, to use the language of Appellees, "it was *necessary* for the Appellant to be relieved of the requirement of the South Carolina Constitution and Statute."

Section 5(2)(b) provides only that the Commission need find that the proposed acquisition by the new Seaboard Company of the properties of the old Company "will be consistent with the public interest." Upon such a finding the Carrier, under paragraph (11) "Shall have full power to carry such transaction into effect and to own and operate any property * * * acquired through such transaction without invoking any approval under state authority" and be *"hereby* relieved from all other restraints, limitations and prohibitions of law, federal, state or municipal."

As pointed out in the original brief for Appellant, it was not even necessary for the Commission to find that compliance with the South Carolina requirements would impose an undue burden upon interstate commerce. It would have been sufficient for the Commission to find the proposed acquisition to be in the public interest and to have stopped there. The fact that it went further does not help the appellees.

This point was so fully argued in Appellant's brief that repetition is unnecessary.

(b) Assuming, however, that a finding as to the burden on interstate commerce was necessary under Section 5, Appellees argue that the Commission either did not intend to find, or that its Report is not susceptible of being construed as a finding, that compliance with the South Carolina law would impose an undue burden upon commerce. Say the appellees:

> "It is submitted that it was not the purpose and intent by said finding directly to relieve the company of its obligation to comply with such requirement. At most, it was an invitation to the company to go into some appropriate court, as the company afterwards did, to seek some relief and to show therein that in fact such relief was necessary to enable it to carry into effect the transactions approved and provided for'."

But the Commission plainly did find conclusively that an undue burden would result from compliance with the South Carolina law. It said unequivocally that it would clearly be an unnecessary and undue burden on interstate commence for the new Company to be subjected to the continuing expense of over $300,000 to maintain a separate corporation to own and operate the South Carolina properties. It said, in effect, (R. 110-112) that for the Seaboard to form a separate South Carolina corporation and then consolidate with the Virginia corporation, resulting in a multiple corporation of Virginia and South Carolina "would result in substantial expense." Finally, quoting from the opinion in *Texas* v. *United States*, 292 U. S. 522, that "The criterion to be applied is that of the controlling public interest" and that the Commission in administering the provisions of Section 5 must do so with a view to carry-

ing out the declared policy of Congress to promote economical and efficient service and the fostering of sound economic conditions in transportation, the Commission stated that corporate simplification wherever possible, is in accord with that policy.

It further found affirmatively that compliance with the South Carolina law "would not accord with the National transportation policy and would not be consistent with the public interest" (R. 113).

The original brief for Appellant (pp. 34-35) cites the decisions of this court as to the conclusiveness of the findings of the Commission. The effort of Appellees to attack these findings is nothing less than a collateral attack which is ruled out by the following decisions: *Illinois Central R. Co.* v. *Public Utilities Comm.*, 245 U. S. 493; *Shields* v. *Utah Idaho Central R. Co.*, 305 U. S. 177; *Lambert Run Coal Co.* v. *Baltimore & O. R. Co.*, 258 U. S. 377; *Venner* v. *Michigan Central R. Co.*, 271 U. S. 127; *Texas* v. *Interstate Commerce Commission*, 258 U. S. 158.

The issue as to collateral attack was raised directly by Appellant in the court below by Section No. 3 of its demurrer (R. 148) to Section Fifth of the answer of the Appellees (R. 141-142). That section of the answer in effect denied the truth of the findings of the Commission. Section 3 of the demurrer explicitly challenged the denials as constituting a collateral attack on the findings.

Appellant has conceded throughout, as indeed it did by filing its suit, the right of the South Carolina Court to pass upon the extent of the powers of the Interstate Commerce Commission under Section 5 to authorize the acquisition by the new Seaboard Company of the South Carolina properties. But Appellant has consistently challenged the right of the South Carolina Court in this proceeding to go behind

the findings of the Commission. The point was especially stressed by Appellant in its brief on reargument in the court below in response to the question raised in the Order directing reargument (R. 153-155).

That Appellees attempt to attack the truth of the findings themselves appears from the following statement in their brief:

> "The Appellees further denied the accuracy of the findings of fact contained in the Order of the Commission undertaking to set out the cost of conforming to the Constitution and laws of South Carolina and denied that compliance with the Constitution and laws of South Carolina would place an undue burden on Interstate Commerce."

As pointed out in the original brief for Appellant, the opinion of the South Carolina Court (R. 157) stated the major issue to be

> "Whether the Report and Order of the Interstate Commerce Commission is valid under Section 5 of the Interstate Commerce Act to relieve plaintiff from compliance with the constitutional and Statutory provisions of South Carolina * * * And further did the Interstate Commerce Commission go beyond its jurisdiction into a field into which it was not directed by the Act of Congress, in undertaking to say in what State a railroad corporation should be chartered and in what state it should not be chartered, regardless of the Constitution and Statute of any particular State."

It is apparent from this language of the opinion of the South Carolina Court that it clearly had before it the question of the power of the Commission to act as it did. The fact that the Court misinterpreted the Report of the Com-

mission as attempting to say in what State the new Seaboard Company should or should not be incorporated is one of the very errors which this appeal seeks to have this Court rectify.

As pointed out in the original brief for Appellant, the Court below aggravated the error by attempting to make a finding directly contrary to that of the Commission, saying (R. 162)

> "As shown by the report and order of the Commission, the cost incident to obtaining a South Carolina charter is negligible as compared with the millions of dollars in value of the physical properties and the millions of dollars of income owned and controlled by the plaintiff. It might be inconvenient or undesirable to obtain a South Carolina charter, but we do not see how such requirement would constitute a burden on interstate commerce."

Appellees make the charge that Appellants conceded the jurisdiction of the South Carolina Supreme Court in this case and are now "trifling" with the South Carolina Supreme Court by questioning its power to review the findings of the Interstate Commerce Commission. Obviously the question of jurisdiction is quite different from the question of the right to review findings. In any case, Appellants' position was clearly stated to the Supreme Court of South Carolina, as appears from the following sentence contained in its brief on reargument before the Supreme Court of South Carolina: "In other words this Court in this case can and must determine whether Section 5 of the Interstate Commerce Act is constitutional and whether the order of the Commission is within the Act, *but this Court cannot review the administrative findings that the Commission made or the*

reasons that it gave in exercising its power under the Act." [Emphasis supplied.]

IV

THE ASSERTION THAT APPELLANT HAS RAISED POINTS IN THIS COURT NOT PRESENTED BELOW.

Appellees attempt to say that Appellant did not, in its complaint as originally filed, make the point that Section 5 by its own terms conferred the power on Appellant, upon a finding that the proposed transaction was in the public interest, to acquire and operate the railroad properties in South Carolina. But it is clear from the complaint (R. 2-18) that the appellant from the beginning asserted its rights under Section 5, and it is additionally entirely clear that the essential issues upon this appeal were raised in the court below and considered by it. The point as to the self-executing nature of Section 5 is not only implicit in the complaint itself, but it was clearly raised in the original brief filed by Appellant in the South Carolina Court and in its brief on reargument. The opinion of that Court fully discusses the purposes and effect of Section 5 even though it misinterpreted the effect of the Commission's Report and Order,—action for which the Appellant can certainly not be held responsible.

Complaint is also made that points (3) and (5) in the original brief for Appellant were not raised below. Point (3) is not confined to the principle that Appellant is an instrumentality of the Federal government but also emphasizes that Appellant is an instrumentality of interstate commerce. The argument on this point is clearly inherent in the status of Appellant as an agency of the National

Transportation System and thus an instrument of Federal policy under the declaration of policy announced by Congress in the enactment of the Transportation Act of 1940 that the legislation was directed "to the end of developing, coordinating and preserving a National Transportation System * * * adequate to meet the needs of the commerce of the United States, of the Postal Service and of the National Defense" (Act. Sept. 18, 1940, 54 Stat. 929). The argument is likewise appropriate in connection with the argument under heading (4) in Appellant's original brief that the South Carolina prohibitions are in and of themselves obstructions to and burdens upon interstate commerce. The following quotation from the opinion in *Texas* v. *United States, supra,* is significant in this connection:

> "The State urges that in the course of the passage of the Transportation Act, 1920, a provision for Federal incorporation of railroads was struck out. But while railroad corporations were left under State charters, they were still instrumentalities of interstate commerce and, as such, were subjected to the paramount federal obligation to render the efficient and economical service required in the maintenance of an adequate system of interstate transportation."

Morever the decisions reviewed under heading (3) are conclusive of the Constitutional right of Congress to confer on state corporations powers additional to those conferred by State charters to the extent even of overriding state obstructions.

It being clear that Congress intentionally gave effect to this principle in selecting the language of paragraph (11)

of Section 5, when amending that paragraph by the Transportation Act of 1940, it can scarcely be believed that this Court will not consider the point for the light that it may throw on a proper interpretation of Section 5.

Respectfully submitted,

W. R. C. COCKE,
J. B. S. LYLES,
Counsel for Appellant.

HAROLD J. GALLAGHER,
LEONARD D. ADKINS,
JAMES B. MCDONOUGH, JR.,
Of Counsel.

APPENDIX A

Excerpts from Hearings Before The Senate Committee 76th Congress, First Session, on Interstate Commerce on S. 1310 and S. 2016—Bills to Amend The Interstate Commerce Act and for Other Purposes; S. 1869—A Bill to Protect Interstate Commerce from The Dangers of unsound Financial Structures, etc., and S. 2009—A Bill to Amend the Interstate Commerce Act, as Amended by Extending its Application to Additional Types of Carriers, etc. Also, Excerpts from Hearings Before The House Committee on Interstate and Foreign Commerce, 76th Congress, First Session on H. R. 2531.

These hearings eventuated in the formulation and passage of the Transportation Act of 1940 which amended and enlarged the Interstate Commerce Act.

The following excerpts deal with the amendments to Section 5, enlarging the corporate powers in connection with consolidations and acquisitions.

Senate Committee Hearings—Statement of Judge R. V. Fletcher pp. 114-115 (Judge Fletcher was the spokesman of a Committee of 6 appointed by President Roosevelt, consisting of M. W. Clement, Carl R. Gray, George M. Harrison, B. M. Jewell, Ernest E. Norris and D. B. Robertson).

> "Those are the broad general standards laid down in the bill. The only other thing I wish to say about this particular language is to call attention to a very important provision which is now paragraph 11 on page 159. The purpose of that, Mr. Chairman, is to give to the Interstate Commerce Commission the power to enlarge the corporate power of the carrier if that is necessary to accomplish the particular consolidation. Instances have arisen in which the charter of the railroad granted by the State, or

under some State law, would prohibit the doing of the thing which the Interstate Commerce Commission finds to be in the public interest, not merely because of the operation of antitrust laws or antimonopoly statutes—that is taken care of in another place—but because there is a lack of corporate power in the carrier, functioning as it does under authority granted by the State law, to accomplish the things that are there sought.

"Section II undertakes to supply that deficiency by having the Congress, acting through the Interstate Commerce Commission, bestow upon the carrier corporate power to accomplish the thing which is there thought to be carried out.

"Someone will say, "Can Congress increase the corporate power of a railroad company?". It can. It has been repeatedly held by the Supreme Court of the United States that under the authority which Congress has to regulate interstate commerce, it can go so far as to add to the corporate power of the railroad, if necessary to carry out the purposes of Congress.

"Senator Austin. Have you a brief on that point which you are putting into the record?

Mr. Fletcher. I can very easily supply one.

Senator Austin. I think a citation of those cases would be useful.

The Chairman. We will be very glad to have you supply a brief.

Mr. Fletcher. I shall be very glad to supply it.

"One of the cases involved, Senator, was a case wherein the Central Pacific Railroad was authorized by Congress to extend its line beyond the State of California into the State of Nevada, as I remember. The question was, could Congress say to a railroad organized under the laws of California that it could actually extend its line beyond the

limits and borders of the State when its charter did not permit it? The Supreme Court held, in an opinion which I think was written by Mr. Justice Miller, that in the exercise of its power to regulate commerce, Congress could go that far. I shall be glad to submit a memorandum of those cases.

"The Chairman. There is no question that in some instances the transportation system of the United States has been handicapped by some of the provisions of State laws.

"Mr. Fletcher. That is true. However, I am here dealing with an authority which involves a little different question from that of a restrictive State law. I am dealing with the question of corporate authority."

House Committee Hearings—Statement of Judge R. V. Fletcher, pp. 682-683.

"Effect of Proposed Consolidation Law"

"The Chairman. Mr. Fletcher, there is one question that I would be interested in, and that is to know what your judgment is as to what we can reasonably anticipate would be the practical result of enacting consolidation legislation such as is proposed before the committee.

"Mr. Fletcher. I think that the practical result would be to promite consolidations if the railroads were freed from the restrictions that I mentioned—standards in the act—which have proven to be impracticable. This would be true particularly, if you enact another provision here which I had not reached in my discussion, but which I will now mention, namely, the provisions found in subsection 10 of this draft that I have handed to the committee. On page 6, it is proposed that "the authority conferred by this section shall be exclusive and plenary, and any

carrier or corporation participating in or resulting from any transaction approved by the Commission under the authority conferred by said section, shall have full corporate power" to carry such transaction into effect, go on and consummate the transaction. That is a very useful provision, because sometimes now even after you get the consent of the Interstate Commerce Commission you are restricted by the limitations placed upon you by State laws where you are incorporated, the laws of the State under which you are operating or by provisions of your own charter which have been granted in some cases by the legislature.

I do not mean now, Mr. Chairman, to say that under present law you are not freed from the restrictions of the State laws of the antitrust type, but I am talking about corporate power. The purpose of this section here is to have the Congress confer corporate power upon the railroads to consummate the plan which the Interstate Commerce Commission has approved.

THE CHAIRMAN. Would that in effect make it a Federal Corporation?

MR. FLETCHER. No, sir; it does not make it a Federal corporation. I remember many years ago when I had occasion to investigate the power of Congress to allow a State organized railroad corporation to enter another State. That was in a case out in the Pacific coast territory and I found that the Supreme Court of the United States had held that Congress, under its power to regulate commerce, could actually confer power upon the Central Pacific Railroad to build its line into a State beyond the State of its original incorporation in the exercise of the Federal power over interstate commerce. That does not make it a Federal corporation. It just

took the State corporation and put another story on it, so to speak, and added some additional authority.

THE CHAIRMAN. Well, that would eliminate any restriction in an action of that kind that a State law might impose.

MR. FLETCHER. It would if that State law restriction stood in the way of carrying out the consolidation which the Commission had approved.